

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 16310
[Redacted])	
Petitioner.)	DECISION
)	
)	

On November 9, 2001, the staff of the Tax Discovery Bureau of the Idaho State Tax Commission issued a Notice of Deficiency Determination to [Redacted] (taxpayer), proposing income tax, penalty, and interest for the taxable years 1995 through 1999 in the total amount of \$16,279.

On January 9, 2002, the taxpayer filed a timely appeal and petition for redetermination. The taxpayer did request a hearing in his protest letter but later chose to submit a return for the Tax Commission to consider. The Tax Commission, having reviewed the file, hereby issues its decision.

The Tax Discovery Bureau (Bureau) received information that the taxpayer sold real property in Idaho and did not report that sale on his income tax return. The Bureau researched the Tax Commission's records and found that the taxpayer stopped filing Idaho income tax returns beginning with tax year 1995. The Bureau did some research on the taxpayer and found the taxpayer had owned property in Idaho until sometime in 1995 and that he obtained Idaho driver's licenses in 1995 and 1999.

The Bureau sent the taxpayer a letter asking him about his Idaho filing requirements. The Bureau did not receive a response from the taxpayer but did receive a response from the recipient of the letter that the taxpayer did not live at that address and had not lived there for the past three to four years. The recipient did have the current address of the taxpayer and he provided it to the Bureau.

The Bureau sent another letter to the taxpayer using the new address. The taxpayer did not respond. The Bureau gathered more information on the taxpayer and determined the taxpayer was required to file Idaho individual income tax returns. The Bureau prepared returns for the taxpayer based upon the information it gathered and sent the taxpayer a Notice of Deficiency Determination. The taxpayer protested the Bureau's determination stating that he moved from Idaho to Washington in 1995. The taxpayer stated he could provide documentation to show he was not living in Idaho.

The Bureau followed up with the taxpayer by sending him a questionnaire designed to determine the taxpayer's place of domicile. The taxpayer completed the questionnaire and returned it to the Bureau. The Bureau then forwarded all the information in the file for administrative review.

The Tax Commission reviewed the information in the file and particularly the information the taxpayer provided in the questionnaire. The Tax Commission found from the information in the questionnaire that the taxpayer, if considered a resident of Idaho, probably met the safe harbor provisions of Idaho Code section 63-3013. Therefore, when the Tax Commission sent the taxpayer a hearing rights letter, the Tax Commission specifically addressed the safe harbor issue and the sale of his Idaho property.

The taxpayer responded to the Tax Commission that he did not believe a hearing was necessary. He also asked what form was necessary to report the sale of his house in Idaho. The Tax Commission responded to the taxpayer's questions and within a couple of weeks the taxpayer submitted a 1995 part-year resident return for the Tax Commission to consider.

The taxpayer stated in the residency/domicile questionnaire that he and his wife have been living in Washington since May 1995. He stated that since moving to Washington they have visited Idaho two to three times a year for about one to two hours per visit.

Idaho Code section 63-3013(c) stated,

- (c) An individual shall not be considered a resident, but may be considered a part-year resident, for income tax purposes during a period of absence from this state described as follows:
 - (1) The period begins with an individual leaving this state if the individual is absent from this state for at least four hundred forty-five (445) days in the first fifteen (15) months.
 - (2) During such period, but excluding the first fifteen (15) months, the individual was not present in this state for more than sixty (60) days in any calendar year.

Idaho State Tax Commission Rule IDAPA 35.01.01.030.02 defines domicile as it pertains to the Idaho Income Tax Act. It states in pertinent part,

The term domicile means the place where an individual has his true, fixed, permanent home and principal establishment, and to which place he has the intention of returning whenever he is absent. . . .

a. Domicile, once established, is never lost until there is a concurrence of a specific intent to abandon an old domicile, an intent to acquire a specific new domicile, and the actual physical presence in a new domicile.

The Bureau's preliminary research gave the indication that the taxpayer did not abandon Idaho as his state of domicile. However, with the additional information the taxpayer provided in the residency/domicile questionnaire, the Tax Commission found that the determination of the taxpayer's domicile a moot point.

The taxpayer stated he and his wife left Idaho in 1995 and have not returned except for one to two hour visits two to three times a year. The Tax Commission believes this kind of movement places the taxpayer within the safe harbor provisions of Idaho Code section 63-3013. Therefore, a determination of the taxpayer's domicile is not relevant in this matter.

In 1995, the taxpayer had wages from Idaho employers and he sold his home in [Redacted], Idaho. From the taxpayer's statements, it is apparent he did not purchase another house so any gain on the sale of his Idaho home would be reportable to Idaho. Therefore, the taxpayer probably met the filing requirement for filing a 1995 return with the state of Idaho.

The Tax Commission corresponded further with the taxpayer, which resulted in the taxpayer providing the Tax Commission with a 1995 part-year resident Idaho return. The return showed the taxpayer's Idaho wages and the sale of his Idaho home. The Tax Commission reviewed the return the taxpayer submitted and found that it represented the taxpayer's Idaho taxable income better than the return the Bureau prepared. Therefore, the Tax Commission accepted the taxpayer's return, subject to the Tax Commission's normal review process, in lieu of the return prepared by the Bureau.

As for taxable years 1996 through 1999, the Tax Commission found that the taxpayer met the safe harbor provision of Idaho Code section 63-3013. And since the taxpayer had no income attributable to Idaho sources, the taxpayer was not required to file income tax returns, with the state of Idaho, for those years.

The taxpayer's 1995 return resulted in tax owed to the state of Idaho. Idaho Code section 63-3045 states that interest shall be added to any tax that is not paid by the due date of the return reporting the tax. Therefore, the Tax Commission added interest to the taxpayer's tax liability at the rate provided for in Idaho Code section 63-3045.

The Tax Commission also added a delinquency penalty to the taxpayer's 1995 return. Idaho Code section 63-3046 states that if a return required by the Idaho income tax act is not

filed by the due date of the return, a penalty of 5% per month to a maximum of 25% may be assessed and collected. The taxpayer's 1995 return was due on April 15, 1996. The Tax Commission did not receive the taxpayer's return until May 21, 2002. Therefore, the Tax Commission added a 25% penalty to the taxpayer's Idaho income tax liability.

WHEREFORE, the Notice of Deficiency Determination dated November 9, 2001, is hereby MODIFIED, in accordance with the provisions of this decision and, as so modified, is APPROVED, AFFIRMED, and MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the taxpayer pay the following tax, penalty and interest:

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
1995	\$48	\$12	\$24	\$84

DEMAND for immediate payment of the foregoing amount is hereby made and given.

An explanation of the taxpayer's right to appeal this decision is enclosed with this decision.

DATED this ____ day of _____, 2002.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this ____ day of _____, 2002, a copy of the within and foregoing DECISION was served by sending the same by United States mail, postage prepaid, in an envelope addressed to:

[REDACTED]

Receipt No. [Redacted]

ADMINISTRATIVE ASSISTANT 1